Law Offices of Public Advocates, Inc.

September 8, 2004

The Honorable Rodney Paige
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Paige:

I am writing to urge you to rectify an erroneous legal interpretation by the Department of Education that is costing taxpayers billions of dollars in unnecessary and excessive payments to some companies participating in the federal guaranteed student loan program. Reports by the New York Times, Los Angeles Times, and The Institute for College Access and Success indicate that Department officials believe they cannot stop lenders from giving new loans the advantages of certain pre-1993 loans earning 9.5 percent. This claimed powerlessness is without legal foundation. Neither legislation, nor a protracted regulatory process, is needed to stop this abuse.

As Secretary of Education, you have the authority, indeed the responsibility, to stop the hemorrhaging of federal funds through this extreme and industry-friendly reading of the special allowance provisions. The Department has the legal and regulatory tools to halt the payments immediately: the Department can and should act today.

The payments on the invoices from lenders are premised on a 1996 non-regulatory notice. That notice can be clarified or revised with a new notice from the agency. This would be the simplest, quickest way for the Department to halt the drain of precious funds. It is not unusual for the Department to issue these non-regulatory notices, and it is common for the Department to clarify past notices with new notices. Indeed, just two weeks ago, the Department modified a prior non-regulatory notice (FP-04-06, at http://www.ifap.ed.gov/dpcletters/FP0406.html). You can use the same simple process to stop the abuse of the 9.5 percent special allowance provisions.

If there is a good reason to proceed through regulatory rulemaking, the Department could still halt the payments by suspending or replacing the current guidance through a new letter, and then solicit public comment to develop its rule on the scope of the special allowance. This would shift the status quo during the rulemaking in the interests of the federal purse and the other federal programs these vast sums could support. To insist on a full scale regulatory proceeding, or passage of a new law, before stopping the damage, is overkill, overcautious, or both.

The Education Department seems paralyzed. Its excuses for inaction make no sense. The public interest demands a bold attack on this practice instead of hand-wringing in the face of lenders who just go on "kissing" brand new loans with pre-1993 tax exempt bond proceeds to magically qualify them for a special allowance that Congress fully intended to vanquish a decade ago.

Sincerely,
Jamienne S. Studley, President, Public Advocates, Inc.
Deputy (1993-99) and General Counsel (Acting, 1997-99), U.S. Department of Education

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